

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

RESOLUTION NO. 70-55

PROHIBITING FURTHER DISCHARGES, REQUESTING ATTORNEY GENERAL TO INITIATE SUMMARY ABATEMENT PROCEEDINGS AGAINST BORCHERS BROTHERS, INC. FOR WASTE DISCHARGE TO LOS GATOS CREEK, AND ORDERING BORCHERS BROTHERS, INC. TO CLEAN UP REFUSE DEPOSITED IN LOS GATOS CREEK FROM ITS CONCRETE PLANT IN SAN JOSE, SANTA CLARA COUNTY

WHEREAS THIS REGIONAL BOARD HAS CONSIDERED

INFROMATION ABOUT THIS DISCHARGE

1. Borchers Brothers, Inc., called the discharger below, has a ready-mix concrete plant adjacent to Los Gatos Creek about 1 mile upstream from its junction with Guadalupe River in San Jose.
2. The discharger has permitted waste to flow and/or be deposited into Los Gatos Creek and on its bank.
3. A report on waste discharge has not been filed by the discharger with this Regional Board.
4. On April 30, 1970 the staff of this Regional Board observed:
 - A. Waste and rinse water from discharger's trucks flowing into the dry bed of Los Gatos Creek.
 - B. Pools of waste in the creek bed more than a thousand feet downstream
 - C. Solid refuse consisting of cemented soil, sand and pieces of concrete covered the 30-foot wide dry stream bed for a distance of more than 125 feet, to a maximum depth of 3 feet.
 - D. Oil covered a section of the creek bank from the top down to the surface of the waste water in the channel.
5. Although Los Gatos Creek is a dry stream bed during part of each year, there is stream flow at times of water release from upstream storage reservoirs and during wet weather. The liquid waste discharge is toxic and it can kill migratory fish. Solid refuse deposited by the discharger will restrict the capacity of the creek to carry flood water. Refuse and oil will be carried downstream to Guadalupe River and San Francisco Bay when flow occurs.
6. Borchers Brothers, Inc. was notified by certified mail that this Board would receive evidence regarding the issuance of orders for abatement and clean up at a meeting duly held on June 25, 1970.

7. This Board, at its meeting on June 25, 1970, reviewed a staff report including staff findings of adverse effects on waters of the state due to these discharges; considered issuing orders for prohibition of further discharges; summary judicial abatement, and clean up; and heard all interested parties present and desiring to be heard.

REGIONAL BOARD FINDINGS

1. Borchers Brothers, Inc. has discharged waste into the waters of the State and has not filed a report on waste discharge with the Regional Water Quality Control Board.
2. Waste discharges by Borchers Brothers, Inc. have caused a condition of pollution and nuisance which requires prompt action to protect public welfare.

IT IS HEREBY ORDERED BY THE REGIONAL BOARD

1. Discharges of waste by Borchers Brothers, Inc. into Los Gatos Creek are prohibited until a report on waste discharge is filed with the Regional Water Quality Control Board and requirements have been prescribed for the proposed waste discharge pursuant to Section 13263(d) California Water Code.
2. Borchers Brothers, Inc. is hereby ordered by this Regional Board to refrain from further waste discharges, and if this order is not complied with, the Executive Officer is directed to request the Attorney General to petition the Superior Court to enjoin such discharges pursuant to Section 13340, California Water Code.
3. Upon the failure of Borchers Brothers, Inc. to comply with this order, the Executive Officer is authorized and directed to request the Attorney General to petition the Superior Court for proper legal relief restraining the discharger from continuing the discharge of wastes in violation of this order pursuant to Section 13264 California Water Code.

CLEAN UP AND ABATEMENT ORDER BY THE REGIONAL BOARD

1. Borchers Brothers, Inc., by September 15, 1970, shall clean up and remove all material designated for removal during the June 12, 1970 joint inspection and generally described as follows:
 - A. All material deposited in the stream bed shall be removed to form a bed of uniform grade from the lowest elevation in the existing channel about 150 feet upstream from the Auzerals Street Bridge, to the present channel elevation beneath the new freeway bridge upstream from Borchers Brothers, Inc. property.
 - B. All oil impregnated material in the bank adjacent to Borchers Brothers, Inc. property shall be removed.
 - C. All loose material deposited along the bank adjacent to Borchers Brothers, Inc. property shall be removed to the tree-line in Borchers Brothers, Inc.'s former pond area and by scraping loose material six (6) inches to a foot in depth on the remaining portion of the West bank of Borchers Brothers, Inc.'s real property.

2. The Attorney General is requested to petition the Superior Court for the issuance of an injunction requiring Borchers Brothers, Inc. to comply forthwith pursuant to Section 13304(a) California Water Code, if that corporation fails to comply with this Order.
3. The orders prescribed herein do not authorize the commission of any act causing injury to the property of another, nor protect Borchers Brothers, Inc. from their liabilities under Federal, State or local law.

WILLIAM C. WEBER
Chairman

June 25, 1970

I, Fred H. Dierker, hereby certify that the foregoing is a true and correct copy of Resolution No. 70-55 adopted by the California Regional Water Quality Control Board, San Francisco Bay Region at its regular meeting on June 25, 1970.

FRED H. DIERKER
Executive Officer
CALIFORNIA REGIONAL WATER QUALITY CONTROL
BOARD - SAN FRANCISCO BAY REGION